structive as the Court of Appeal ordered a retrial on the ground of deliberate concealment of material evidence affecting a party's credibility from the court. The brief facts are that at the trial in October, 1960 of an action for false imprisonment and assault in which the main question was whether the plaintiff's or the defendant's account of the circumstances of the plaintiff's arrest by the defendant at Trafalgar Square and his detention at the police station was correct. It was concealed from the court that in December, 1959, while the action was pending, the defendant had been reduced in rank from chief inspector to station sergeant on a disciplinary charge of having been a party to an arrangement whereby a police constable purported to have arrested a street bookmaker in October, 1959, when the defendant was the officer who in fact made the arrest. This matter was known to the defendant's legal advisers, but neither the plaintiff nor his legal advisers had reason to suspect it. It was deliberately concealed from the court at the trial of the plaintiff's action.

In his judgment Holroyd Pearce L.J. endorsed what Denning L.J., as he then was, said in *Tombling's* case[2] relating to the duty of counsel:

"The duty of counsel to his client in a civil case – or in defending an accused person – is to make every honest endeavour to succeed. He must not, of course, knowingly mislead the court, either on the facts or on the law, but, short of that, he may put such matters ... as in his discretion he thinks will be most to the advantage of his client. . . . "

Having distinguished *Tombling's* case[2] he went on to say:

"In every case it must be a question of degree, weighing one principle against the other. In this case it is clear that the judge and jury were misled on an important matter. I appreciate that it is very hard at times for the advocate to see his path clearly between failure in his duty to the court, and failure in his duty to his client ... But in my judgment the duty to the court was here unwarrantably subordinated to the duty to the client."

In the present case it is clear that the learned Judge was misled on an important matter, that is, the concealment of a document C.P.5 as to affect the credibility of a witness even though it did not directly relate to the issue in the action. It is very important for a counsel to remember that whatever may be his duty to his client his duty to the court remains paramount in the administration of justice. The appellant believed that the course he took was proper in all the circumstances. He apologised if he was wrong. The learned Judge thought he was wrong. So do we.

The power of summary punishment is a necessary power to maintain the dignity and authority of the Judge and to ensure a fair trial. It should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. As Lord Denning, M.R. said in *Balogh* v. *Crown Court*:[4]

"It is to be exercised by the judge of his own motion only when it is urgent and imperative to act immediately – so as to maintain the authority of the court – to prevent disorder – to enable witnesses to be free from fear – and jurors from being improperly influenced – and the like ..."

This power must be used sparingly but fearlessly when necessary to prevent obstruction of justice. We feel that we must leave the exercise of this awesome power to the good sense of our Judges. We will interfere when this power is misused. We consider that the learned Judge was right in this case to find the appellant guilty. However, we thought the penalty imposed was rather harsh in the circumstances and therefore varied the sentence with the option of a fine.

Appeal dismissed; sentence varied.

Solicitors: *Sri Ram, Zulkifly & Kumar.*

RAMIAH v. PUBLIC PROSECUTOR

[F.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah F.JJ.) March 19 & 20, 1984]

[Kuala Lumpur – Federal Court Criminal Appeal No. 30 of 1983]

Penal Code, ss. 300 & 304 – Culpable homicide – Exceptions under s. 300.

Criminal Law and Procedure – Trial by jury – Caution statement – Duty of judge to inform jury that statement was part of the prosecution case – Duty of jury to consider truth of statement and weight to be given to it.

An offence may amount to culpable homicide under section 304 of the Penal Code even though it does not come within any of the exceptions under section 300 of the Penal Code. If the exceptions under section 300 are not applicable then the learned Judge should not refer to them as they may confuse the jury in their consideration.

FEDERAL COURT.

J. Nadchatiram for the appellant.

Mohtar bin Abdullah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court): We consider that the summing-up as a whole is inadequate for the jury to reach a proper verdict on the evidence. The summing-up is too sketchy. The intention to kill was not properly explained to the jury. Also, the jury were not properly directed concerning the fundamental principle of our criminal law on the presumption of innocence.

With regard to the exceptions under section 300 of the Penal Code, it is clear that unless the act done constitutes, at least *prima facie*, murder by reason of the intention with which it is found to be done, the learned Judge need not have to direct the jury to consider them.

In our view an offence may amount to culpable homicide under section 304 of the Penal Code even though it does not come within any of the exceptions under section 300 of the Penal Code. If the exceptions under section 300 are not applicable then the learned Judge should not refer to them as they may confuse the jury in their consideration. There is no doubt that the deceased was killed as a result of the injuries which were clearly not accidental.

In the summing-up nothing was said about the caution statement. Having admitted it the learned Judge should inform the jury that the caution statement was part of the prosecution case. It is their duty to consider the truth of the statement and the weight to be given to it. If the jury was properly directed on the question of intention the result might well be different. However, it is difficult to say whether the appellant acted with the intention of causing such bodily injury as he knew to be likely to cause death or as is sufficient in the ordinary course of nature to cause death.

Although we consider the summing-up inadequate we do not think the appellant is entitled to be acquitted on the evidence. We would allow the appeal by setting aside the conviction and sentence of death by substituting a conviction for culpable homicide under section 304 of the Penal Code and sentence of ten years' imprisonment from the date of arrest.

Order accordingly.

Solicitors: *Gunaretnam & Co.*

PUBLIC PROSECUTOR v. MUSTAFFA BIN AHMAD

[O.Cr. J. (Ibrahim J.) January 9, 1977]

[Johore Bahru – Criminal Trial No. 2 of 1976]

Criminal Law and Procedure – Possession of firearms and ammunition – Charges under Internal Security Act 1960 – Preliminary objections to charges – Cautioned statement – Admissibility and voluntariness – Reliability of prosecution witnesses – Discrepancies – Accused's evidence preferred – Internal Security Act 1960, ss. 47, 57 & 75 – Essential (Security Cases) Regulation 1975, regs. 13, 17 & 24 – Federal Constitution, arts. 8(1) & 145(3) – Criminal Procedure Code (F.M.S. Cap. 6), s. 376(i) & (iii) – Revision of Laws Act, 1968, s. 12 – Interpretation Act, 1967, ss. 28 & 35(2).

Constitutional Law – Equality before the law – Discretion of Attorney-General over control and direction of criminal prosecution – Federal Constitution, arts. 8(1) & 145(3).

In this trial, the accused is charged with the commission of two offences under the Internal Security Act, 1960, one under s. 57(1)(a) for the possession of .22 Double Barrel Pistol and the other under s.57(1)(b) for the possession of 5 rounds of .22 ammunitions.

The accused raised two preliminary objections, contending: First, that Article 8(1) of the Federal Constitution had been contravened because no reason has been given by the prosecution why the accused had been charged under the Internal Security Act, 1960, when there are two other laws relating to possession of firearms, *i.e.* the Arms Act No. 21/60 and the Firearms (Increased Penalties) Act No. 371/71; and secondly, the proclamation of all areas in the Federation to be security areas for the purposes of Part II of the Internal Security Act ("the Act") made by the Yang di-Pertuan Agong under s. 47 of the Act is no longer valid because the said s. 47 and s. 57 of the Act now come under Part III thereof.

Prosecution evidence shows *inter alia* that, according to PW1, who had received information which he did not reduce to writing, the accused said that he had kept a double-barrel .22 pistol in a certain house, where the accused led PW1 to a cupboard. The accused opened the cupboard door and pointed to a clothings compartment where PW1 recovered a .22 double-barrel pistol (P2) and 5 rounds of .22 ammunitions (P3) on January 8, 1976. The accused had no licence for these. PW1 lodged a police report and on January 9, 1976 handed the accused to PW13, who recorded (P11) from the accused on January 13, 1976 a cautioned statement, the voluntariness of which was disputed.

Held: (1) article 8(1) of the Federal Constitution had not been contravened in view of the provisions of s.376(i) and (iii) of the Criminal Procedure Code and article 145(3) of the Constitution;

(2) on the 2nd preliminary objection, the Proclamation is valid in view of the provisions of s. 12 of the Revision of Laws Act, 1968, and ss. 28 and 35(2) of the Interpretation Act 1967;

(3) no weight should be given to the information received by PW1 as he had not reduced it to writing as his memory does not appear to be reliable;